

In regard to Issue No. 3, dependent claims 62 and 63 will stand with independent claim 59, but will fall separately.

In regard to Issue No. 4, dependent claim 67 will stand with independent claim 59, but will fall separately.

In regard to Issue No. 5, independent claim 69 and dependent claims 71-73 will stand or fall with independent claim 69.

In regard to Issue No. 6, dependent claim 70 will stand with independent claim 69, but will fall separately.

In regard to Issue No. 7, independent claim 74 and dependent claims 75-76 will stand or fall with independent claim 74.

In regard to Issue No. 8, dependent claim 77 and 78 will stand with independent claim 74, but will fall separately.

8. **ARGUMENT**

**Issue No. 1:**

The Examiner rejected claims 59, 60, 66, and 68 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Patent No. 5,891,035) in view of Reeder (U.S. Patent No. 5,852,812).

Claim 59 recites:

A method for providing operational protocols to medical diagnostic systems, the method comprising the steps of:

storing a protocol on a machine readable medium, the protocol including at least one operating parameter for a medical diagnostic system;

displaying user viewable indicia descriptive of the protocol at a medical diagnostic location, wherein the user viewable indicia include an exemplary image obtainable via the protocol;

performing a protocol exchange transaction including selecting the protocol via a user interface and loading the protocol at the medical diagnostic location from the machine readable medium via a network connection to the medical diagnostic location; and

storing an accounting record of the transaction.

Appellants contend the Examiner's rejection simply cannot stand for the following reasons. First, the cited reference combination fails to teach all of the features recited in independent claim 59. For instance, the Wood et al. and Reeder references fail to disclose or suggest "displaying user viewable indicia descriptive of the protocol at a medical diagnostic location, wherein the user viewable indicia include an exemplary image obtainable via the protocol." Secondly, the Reeder reference is non-analogous art and, as such, inapplicable, for the purposes of an obviousness rejection. Thirdly, the Examiner's combination is improper, as the references provide no suggestion or motivation for the combination.

**A. The References Fail to Disclose *User-Viewable Indicia***

The Wood et al. and Reeder references do not disclose or suggest "displaying user-viewable indicia descriptive of the protocol at a medical diagnostics location, wherein the user-viewable indicia include an exemplary image obtainable via the protocol," as recited in claim 59. In the Office Action mailed on April 1, 2003, the Examiner asserted that the Wood et al. reference discloses the recited feature, but admitted that it does not expressly disclose that the user viewable indicia include an exemplary image obtainable via the diagnostic system. Further, the Examiner stated that this feature is obvious because the exemplary images of Wood et al. are obtainable via the diagnostic system, and presumably via the protocol. In the Response to Arguments, the Examiner appears to assert that the reference image

library 400 of the Wood et al. reference discloses the exemplary images. Appellants respectfully traverse this assertion.

The Wood et al. reference describes the ability of an ultrasound system to communicate and access data from a network. *See* Wood et al., col. 2, lines 8-19. The operator of the ultrasound system may access reference diagnostic images on the system or elsewhere to assist in diagnosing pathological conditions. *See* Wood et al., col. 2, lines 30-49. This allows the operator to consult with other physicians at other locations and exchange messages with other systems. *See* Wood et al., col. 7, lines 10-20. Through the browser 100 on the ultrasound system, the operator may access a reference image library 400, which may include images in categories relating to desired pathologies or conditions. *See* Wood et al., col. 9, line 41 to col. 10, line 19. As such, the operator can compare the patient's image with the reference image from the library to aid in a diagnosis of the patient's condition. *See* Wood et al., col. 10, lines 19-22. Clearly, the Wood et al. reference describes using *actual, full* images for the purposes of diagnostic treatment, not for an *exemplary image obtainable via the protocol*. In addition, the images in the Wood et al. reference are not descriptive of the protocol being used at the ultrasound system. An ultrasonographer who uses numerous ultrasound machines at different locations can store presets in a file on a network server for later retrieval at another location. *See* Wood et al. col. 7, lines 20-33. These presets cannot, however, be confused with Wood et al.'s use of "reference images." The reference images of Wood et al. do not present an operator of an ultrasound system with protocol options, but are merely used to aid diagnosis of a patient's condition and training new ultrasound system users. *See* Wood et al., col. 10, lines 12-22 and lines 35-43. As such, the referenced images and use of the reference images in the Wood et al. reference do not disclose or suggest displaying user-viewable indicia that is descriptive of an imaging protocol.

While the Examiner does not specifically rely on the Reeder reference to disclose the recited feature, it fails to cure the deficiencies of Wood et al. The

Reeder reference describes an online billing system for exchanging international currency from credit card transactions. *See* Reeder, col. 2, lines 36-44. In fact, the Reeder reference has nothing to do with medical diagnostic systems or anything related to the medical field. The reference, at best, describes a billing system and does not mention protocols, much less an exemplary image obtainable via a protocol. Accordingly, the Wood et al. and Reeder references fail to disclose or suggest “displaying user viewable indicia descriptive of the protocol at a medical diagnostic location, wherein the user viewable indicia include an exemplary image obtainable via the protocol,” as recited in claim 59.

Furthermore, the Examiner appears to have taken Official Notice of facts outside the record that the Examiner apparently believes are capable of demonstration as being “well known” in the art. Specifically, the Examiner has repeatedly asserted that the user viewable indicia including an exemplary image obtainable via the protocol is “well known” to one of ordinary skill in the art. Therefore, in accordance with M.P.E.P. Section 2144.03, Appellants have traversed and challenged the Examiner’s apparent use of Official Notice. However, the Examiner has failed to provide any evidence to support the assertion, as requested by the Appellants. Appellants still respectfully request objective evidence, such as an additional reference, in support of the Examiner’s position if the rejection is to be maintained. If the Examiner finds an additional reference and applies it in combination with the Wood et al. and Reeder references, Appellants further request that the Examiner specifically identify the portion of the newly cited art that discloses the allegedly “well known” elements in the recited claim 59, or withdraw the rejection. Accordingly, the Wood et al. and Reeder references fail to disclose all the recited features of independent claim 59.

**B. The Reeder Reference is Non-Analogous Prior Art**

The Reeder reference is non-analogous art. It is not a proper basis for the Examiner’s obvious rejection. For the teachings of a reference to be prior art under

35 U.S.C. § 103, there must be some basis for concluding that the reference would have been considered by one skilled in the particular art working on the particular problem with which the invention pertains. *In re Horne*, 203 U.S.P.Q. 969, 971 (C.C.P.A. 1979). Non-analogous art cannot properly be pertinent prior art under 35 U.S.C. § 103. *In re Pagliaro*, 210 U.S.P.Q. 888, 892 (C.C.P.A. 1981). The determination of whether a reference is from a non-analogous art is set forth in a two-step test given in *Union Carbide Corp. v. American Can Co.*, 724 F.2d 1567, 220 U.S.P.Q. 584 (Fed. Cir. 1984). In *Union Carbide*, the court found that the first determination was whether “the reference is within the field of the inventor’s endeavor.” If it is not, one must proceed to the second step “to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved.” In regard to the second step, *Bott v. Fourstar Corp.*, 218 U.S.P.Q. 358 (E.D. Mich. 1983) determined that “analogous art is that field of art which a person of ordinary skill in the art would have been apt to refer in attempting to solve the problem solved by a proposed invention.” “To be relevant, the area of art should be where one of ordinary skill in the art would be aware that similar problems exist.” *Id.*

In the Office Action mailed April 1, 2003, the Examiner admitted that the Reeder reference is not within the field of the Appellants’ endeavor. As such, Appellants will address the second prong of the *Union Carbide* test. For the rejection to stand, the Reeder reference must comply with the second prong of the *Union Carbide* test.

In the rejection, the Examiner appears to assert that the problem to be solved is a desire to be paid. However, under the *Union Carbide* test, to be analogous art, the Reeder reference must be in the field of art that a person of ordinary skill in the medical imaging art would be aware that similar problems exist.

In the present application, the Appellants describe the technique for making such protocols available to a system user, for easily selecting such protocols and installing them for use, and for transmitting protocols to a diagnostic system where they can be executed. *See* Application, page 1, lines 8-11. The medical diagnostics and imaging systems, such as computed tomography (CT) systems, x-ray systems, magnetic resonance (MR) systems, positron emission tomography (PET) systems, ultrasound systems, nuclear medicine systems, and so forth, are able to offer physicians a range of techniques for imaging particular types of tissues, organs, physiological systems and so forth, that are located in a single facility. *See* Application, page 1, line 22-page 2, line 2. In the medical diagnostic systems, protocols are employed to perform a series of functions, typically designed to produce image data which can later be reconstructed. *See* Application, page 2, lines 13-25. In many systems, additional protocols may be executed on existing components after their installation is accomplished by downloading the protocol. *See* Application, page 2, line 27 to page 3, line 3. However, current protocol distribution and upgrade systems fail to include sufficient information on how to execute or implement the protocol, or may require distribution of the protocols by the personnel of the service provider. *See* Application, page 3, lines 5-15. Similarly, the operator of the diagnostic systems may not be aware of new protocols that currently exist. *See* Application, page 3, lines 15-19. As such, present technique provides a novel approach to handling imaging and diagnostic system protocols assigned to respond to these needs. *See* Application, page 3, line 29-page 4, line 9.

The simple desire to be paid in a business environment, as asserted by the Examiner, is simply not enough to satisfy the second prong of the *Union Carbide* test. The mere fact that the Examiner relied on the desire to be paid as a strong and obvious motivation is not reasonably pertinent to the particular problem with which Appellants were involved. Appellants submit that the Reeder reference is clearly completely unrelated to problems with respect to medical systems or access to image protocols. As such, a person of ordinary skill in the art would never think to refer to

the Reeder reference in attempting to solve the problems associated with medical imaging protocols. Therefore, Appellants respectfully assert that the Reeder reference is non-analogous prior art and, as such, is inapplicable against the claims with respect to an obviousness rejection.

**C. The References Lack the Necessary Motivation or Suggestion Combined**

Moreover, the Examiner has failed to present a convincing line of reasoning to support a suggestion or motivation to combine the Wood et al. reference or the Reeder reference. In the Office Action mailed on April 1, 2003, the Examiner stated:

Hence, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to store an accounting record of the transaction, for the stated advantage of billing users for downloading files (of which protocols are an example).

In addition, in the Response to Arguments, the Examiner asserted that:

Examiner acknowledges that motivation is required to combined the references, but holds that the desire to be paid is generally a strong and obvious motivation for those in business.

The Examiner's statements are nothing more than unsupported assertions regarding the teachings of Wood et al. and Reeder, and fails to articulate a convincing line of reasoning as to why one of ordinary skill in the art would combine the references. As such, these unsupported assertions do not meet the evidentiary standard required for combining references under Section 103.

As discussed above, the Wood et al. reference describes an ultrasonic diagnostic imaging system that includes a browser for communication over a network. *See* Wood et al., col. 2, lines 30-49. The system in Wood et al. allows an operator to send electronic messages from the ultrasound system to consult with other physicians and access system presets for a given exam. *See* Wood et al. col. 7,

lines 10-26. In addition, the operator may access a reference image library 400 for images of a desired pathology or condition. *See* Wood et al., col. 10, lines 5-22. The use of these images may aid in making a diagnosis of the patient's condition. *See* Wood et al., col. 10, lines 19-22. Again, they are *not* used to select desired protocols.

In contrast, the Reeder reference describes an online billing system for exchanging international currency for credit card transactions. *See* Reeder, col. 2, lines 16-45. The billing system of Reeder relates to pricing and billing international customers in local currency from a single credit card process. *See* Reeder, col. 2, lines 16-26; col. 4, lines 3-15; lines 56-62. Undeniably, the Reeder reference does not disclose or suggest *diagnostic systems* or anything related to the medical industry. Likewise, the Wood et al. reference does not disclose or suggest an online billing system for an online computer network. In fact, the Wood et al. reference merely discloses that an ultrasound system may communicate with a reference library to aid in making a diagnosis of the patient's condition. Thus, the references fail to support the combination.

In conclusion, because the Examiner has failed to show that the cited references disclose all of the recited features, as well as a convincing line of reasoning as to why one of ordinary skill in the art would have combined their teachings, the Examiner has failed to establish a *prima facie* case of obviousness. Therefore, independent claim 59 and the dependent claims 60, 66 and 68 are believed to be patentable over Wood et al. and Reeder. For these reasons, Appellants request that the Board overturn the rejection and indicate the allowability of these claims.

**Issue No. 2:**

The Examiner rejected claims 61 and 64 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Patent No. 5,891,035) in view of Reeder (U.S.



Patent No. 5,852,812) and Official Notice. To provide support for the Official Notice, the Examiner relied on the Strauss et al. (U.S. Patent No. 5,790,173) for claim 61. For claim 64, the Examiner relied on Grate et al. (U.S. Patent No. 5,956,483).

Appellants believe claims 61 and 64 are patentable based on their dependence from patentable claim 59, and their recited subject matter. In the rejection of claim 61, the Examiner relied upon the Strauss et al. reference to provide support for the Official Notice that it is “well known” to *transmit authorization prompts*. In the rejection of claim 64, the Examiner relied upon the Grate et al. reference to provide support for the Official Notice that it is “well known” for *indicia to include textual descriptions of programs or products*. As discussed above, the Wood et al. and Reeder references fail to disclose all of the recited features of claim 59. The Strauss et al. and Grate et al. references are simply used to provide support for Official Notice taken by the Examiner, but fail to cure the deficiencies of the Wood et al. and Reeder references. The Strauss et al. reference relates to an advanced intelligent network, which has a network switching system controlled by a programmable centralized database that is used to provide communications. *See* Strauss et al., col. 6, line 62 to col. 7, line 22. The Grate et al. reference describes a technique for specialized functions to be implemented on the computer of a web user. *See* Grate et al., col. 1, lines 48-57. As the Strauss et al. and Grate et al. references are unrelated to *medical diagnostic systems and operational protocols for these systems*, the references fail to cure the deficiencies of the Wood et al. and Reeder references, as discussed above. Accordingly, Appellants respectfully request the Board overturn the rejection and indicate the allowability of claims 61 and 64.

**Issue No. 3:**

The Examiner rejected claims 62 and 63 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Patent No. 5,891,035) in view of Reeder (U.S. Patent No. 5,852,812) and Wyman (U.S. Patent No. 5,260,999).

Appellants believe claims 62 and 63 are patentable based on their dependence from patentable claim 59, and their recited subject matter. In the rejection, the Examiner relied upon Wyman to teach verifying a service subscription of a site seeking to use a program and to teach that subscriptions may be time expiring subscriptions. As discussed above, the Wood et al. and Reeder references fail to disclose all the recited features of claim 59. The Wyman reference describes a license management system to account for software product usage in a computer system. *See* Wyman, col. 6, lines 43-62. As the Wyman reference is unrelated to *medical diagnostic systems or operational protocols for medical diagnostic systems*, the reference fails to cure the deficiencies of the Wood et al. and Reeder references noted above. Accordingly, Appellants respectfully request the Board overturn the rejection and indicate the allowability of claims 62 and 63.

**Issue No. 4:**

The Examiner rejected claims 67 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Patent No. 5,891,035) in view of Reeder (U.S. Patent No. 5,852,812) in view of Clark et al. (U.S. Patent No. 5,982,917).

Appellants believe claim 67 is patentable based both on its dependence from patentable claim 59, and its recited subject matter. In the rejection, the Examiner relied upon the Clark et al. reference to teach data for filming, viewing, reconstructing, or processing images reconstructed from the image data. However, as previously discussed, the Wood et al. and Reeder references fail to disclose all of the recited subject matter of independent claim 59. The Clark et al. reference does not cure these deficiencies. Accordingly, Appellants respectfully request that the Board overturn the rejection and indicate the allowability of claim 67.

**Issue No. 5:**

The Examiner rejected claims 69 and 71-73 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Patent No. 5, 891,035) in view of Reeder (U.S. Patent No. 5,852,812) and Official Notice. To provide support for the Official Notice, the Examiner relied on Wyatt (U.S. Patent No. 6,041,411).

Claim 69 recites;

A method for obtaining an operational protocol for a medical diagnostic system or institution, the method comprising the steps of:

ordering a protocol by viewing a protocol list on a user interface at the medical diagnostic system or institution, and selecting a desired protocol from the list, wherein the protocol list includes an exemplary image obtainable via the protocol;

performing a transaction by accessing data from a protocol library defining the desired protocol via a network link between the diagnostic system or institution and the library, and transmitting the data from the library to the diagnostic system; and  
storing a record of the transaction.

**A. Recited Features of Claim 69 Missing from the Proposed Combination**

In the rejection, the Examiner admitted that the Wood et al. reference does not expressly disclose ordering a protocol by viewing a protocol list on a user interface at the medical diagnostic system and selecting a desired protocol from the list. Yet, the Examiner asserted that the Wood et al. reference discloses preferred presets accessed from an HTML page for retrieval over the internet or another network, which “comes close.” Needless to say, Appellants can find no legal basis for any “comes close” standard in the caselaw or Patent and Trademark Office practice. Further, the Examiner took Official Notice that it is “well known” to view lists of products or files that may be ordered, and select the desired item from the list. In addition, the Examiner again admitted that the Wood et al. reference does not expressly disclose that the protocol list includes an exemplary image obtainable via

the protocol. Also, as noted above, the Examiner stated that this feature is obvious because the exemplary images of Wood et al. are obtainable via the diagnostic system, and presumably via the protocol. Appellants respectfully traverse these assertions.

The Wood et al. reference fails to disclose the recited features. The system presets that the Examiner asserts are equivalent to the protocols are merely used to prevent the operator from manually setting up a machine. *See* Wood et al., col. 7, lines 16-20. By storing these presets in a file, the ultrasound system operator may access personal preferred system presets without the need to manually set up the machine. *See* Wood et al., col. 7, lines 20-26. These presets are not described as being in a list or even being associated with an exemplary image. In addition, as previously discussed, the images in the reference image library 400 are merely used to aid in making a diagnosis of a patient's condition. Clearly, the Wood et al. reference does not disclose or suggest a *protocol list* that includes an *exemplary image obtainable via the protocol*.

While the Examiner does not specifically rely on the Reeder reference to disclose the recited feature, the Reeder reference fails to cure the deficiencies of the Wood et al. reference. As noted in the previous discussions, the Reeder reference describes an online billing system that exchanges international currency for credit card transactions. *See* Reeder, col. 2, lines 16-44. No mention is made to a medical diagnostic system, much less a *protocol list* or *protocols associated with the medical diagnostic system*. As such, the Reeder reference fails to cure the deficiencies of the Wood et al. reference.

Furthermore, in the Office Action mailed on April 1, 2003, the Examiner provided the Wyatt reference to support the Examiner's assertion that it is "well known" in the art to view lists of products or files that may be ordered and select the desire item from the list. These assertions, still fail to cure the deficiencies of the

Wood et al. and Reeder references. The Wyatt reference describes a method for verifying user access rights to electronically transmitted digital information. *See* Wyatt, col. 1, lines 54-62. Indeed, in the Wyatt reference, the catalog file includes client information 152 and a products section 154. *See* Wyatt, col. 9, lines 55-66. Each available product is identified in the product section 154 by a SKU number in the SKU field 126, a product name in the product name field 158, a description in the description field 160, and a price in the price field 162. *See* Wyatt, col. 9, line 67 to col. 10, line 5. The reference does not disclose or suggest that an *exemplary image* is presented in the *protocol list*. As such, the Wyatt reference fails to cure the deficiencies of the Wood et al. reference and Reeder reference with regard to independent claim 69.

Moreover, the Examiner again appears to have taken Official Notice of facts outside the record that the Examiner apparently believes are capable of demonstration as being “well known” in the art. Specifically, the Examiner has repeatedly asserted that a protocol list including exemplary images obtainable via the protocol is “well known” to one of ordinary skill in the art. Therefore, in accordance with M.P.E.P. § 2144.03, Appellants have traversed and challenged the Examiner’s apparent use of Official Notice. However, the Examiner has failed to provide any evidence to support the assertion, as requested by the Appellants. Appellants still respectfully request objective evidence, such as an additional reference, in support of the Examiner’s position if the rejection is to be maintained. If the Examiner finds an additional reference and applies it in combination with the Wood et al. and Reeder references, Appellants further request that the Examiner specifically identify the portion of the newly cited art that discloses the allegedly “well known” elements in the recited claim 69, or withdraw the rejection. Accordingly, the Wood et al. and Reeder references fail to disclose all the recited features of independent claim 69.

**B. Reeder Reference is Non-Analogous Art**

As discussed above with regard to independent claim 59, the Reeder reference is non-analogous art. The Reeder reference describes problems associated with pricing and billing international customers at local currency from a single credit card processor. *See* Reeder, col. 2, lines 16-26. Again, Appellants respectfully assert that the problem described in Reeder is not reasonably pertinent to the problems of distributing image protocols for medical diagnostic systems. Also, as noted above, Appellants assert that the desire to be paid, as suggested by the Examiner, is not sufficient evidence to establish that the Reeder reference is directed to the same problems addressed in the present Application. Therefore, Appellants respectfully assert that the Reeder reference is non-analogous prior art and, as such, is inapplicable against the claims under appeal.

**C. The References Lack the Motivation or Suggestion to Combine**

Again, as noted above in with regard to independent claim 59, the Examiner's statements regarding the motivation to combine the Wood et al. and Reeder references are not sufficient to support a *prima facie* case of obviousness. Because the Wood et al. and Reeder references are unrelated, the Examiner, at best, is employing impermissible hindsight reconstruction by combining the cited references. Because the Examiner has not presented a reasonable or even tenable motivation or suggestion for the combination, Appellants respectfully request that the Board overturn the Examiner's rejection and indicate the allowability of independent claim 69.

**Issue No. 6:**

The Examiner rejected claim 70 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Patent No. 5,891,035) in view of Reeder (U.S. Patent No. 5,852,812), Official Notice, and admitted prior art. As noted above, to provide support for the Official Notice, the Examiner relied on Wyatt (U.S. Patent No. 6,041,411).

Appellants believe that claim 70 is patentable based on its dependence from patentable claim 69, and its recited subject matter. In the rejection, the Examiner relied upon supposed admitted prior art, simply put, that there are a plurality of diagnostic system modalities with respective protocols. Even if this is true, as discussed above with regard to independent claim 69, the Wood et al. reference, the Reeder reference, and the Official Notice fail to disclose all of the recited features of independent claim 69. Any such "admitted prior art" fails to cure the deficiencies of the Wood et al. reference, the Reeder reference, and the Official Notice as regards claim 69, as previously discussed. Accordingly, Appellants respectfully request the Board overturn the rejection and indicate the allowability of claim 70.

**Issue No. 7:**

The Examiner rejected claims 71-76 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Patent No. 5,891,035).

Claim 74 recites:

A system for providing operational protocols to a medical diagnostic station or institution, the system comprising:

- at least one storage device for storing data defining a protocol, the protocol including data for controlling operation of the diagnostic station;
- a messaging module in the diagnostic station or the institution for formulating messages containing data descriptive of a desired protocol, the descriptive data including an exemplary image obtainable via the protocol;
- and
- communications circuitry for establishing a network link between the diagnostic station or institution and a remote protocol provider, for transmitting data descriptive of the desired protocol, and for receiving a reply from the remote protocol provider.

Appellants respectfully contend that the Examiner's rejection fails for at least two reasons. First, the Wood et al. reference fails to disclose or teach all the recited features of independent claim 74. For instance, the Wood et al. reference fails to disclose or suggest "a messaging module in a diagnostic station or the institution for formulating messages containing data descriptive of the desire protocol, the descriptive data including an exemplary image obtainable via the protocol." Secondly, the Examiner has taken Official Notice regarding features that are alleged to be "well known" in the art, but has no provided support for the Official Notice.

**A. Recited Features Missing from Claim 74**

In the rejection, the Examiner asserted that the Wood et al. reference discloses the recited features. However, the Examiner admitted that the Wood et al. reference does not expressly disclose that the descriptive data include an exemplary image obtainable via the protocol. Again, as noted above, the Examiner asserted that images are obtainable via the diagnostic system, and presumably via a protocol. However, as previously discussed, the reference image library 400 of the Wood et al. reference describes images useful for diagnosis purposes. *See* Wood et al., col. 10, lines 8-15. These images accessible in the referenced image library 400 are merely used to aid the operator in making a diagnosis of the patient's condition. *See* Wood et al., col. 10, lines 13-22. Again, the use of the images described in the reference is simply aid in diagnosing a desired pathology or condition or to assist in training. *See* Wood et al., col. 10, lines 12-15; lines 41-43. As noted above, nothing in the Wood et al. reference discloses or suggests that *descriptive data* include an *exemplary image obtainable via a protocol*. The reference images of Wood et al. are not even associated with any particular protocol. As such, the Wood et al. reference fails to disclose all of the recited feature in independent claim 74.

**B. Failure to Support Alleged Elements that are Well Known in the Art**

Furthermore, the Examiner has taken Official Notice of facts outside the record that the Examiner apparently believes are capable of demonstration as being



“well known” in the art. Specifically, the Examiner has repeatedly asserted that the descriptive data including an exemplary image obtainable via the protocol is “well known” to one of ordinary skill in the art. Therefore, in accordance with M.P.E.P. Section 2144.03, Appellants have traversed and challenged the Examiner’s apparent use of Official Notice. However, the Examiner has failed to provide any evidence to support the assertion, as requested. Appellants still respectfully request objective evidence, such as an additional reference, in support of the Examiner’s position if the rejection is to be maintained. If the Examiner finds an additional reference and applies it in combination with the Wood et al. reference, the Appellants further request that the Examiner specifically identify the portion of the newly cited art that discloses the allegedly “well known” elements in the recited claim 74, as discussed above, or withdraw the rejection. Accordingly, the Wood et al. reference fails to disclose all the recited features of the independent claim 74.

Because the Examiner has failed to show that the cited reference discloses all the recited features, as well as a convincing line of reasoning as to why one of ordinary skill in the art would have found the claimed invention obvious in light of the cited reference, the Examiner has failed to establish a *prima facie* case of obviousness. Therefore, Appellants respectfully request the Board overturn the Examiner’s rejection and indicate the allowability of independent claim 74 and dependent claims 75 and 76.

**Issue No. 8:**

The Examiner rejected claims 77 and 78 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Patent No. 5,891,035) in view of Official Notice. To provide support for the Official Notice, the Examiner relied on Pourjavid (U.S. Patent No. 5,883,985) and Ross et al. (U.S. Patent No. 6,026,417).

Appellants believe claims 77 and 78 are patentable based on their dependence from patentable claim 74, and their recited subject matter. In the rejection, the

Examiner relied on the Pourjavid and Ross et al. references to provide support that it is well-known for various devices to be networked to a computer workstation and that storage devices may be local to the remote providers. However, as previously noted, the Wood et al. reference fails to disclose all the recited features of independent claim 74. The Pourjavid reference describes a method of calibrating an image reproduction process to compensate for the image reproduction characteristics of the particular one of several reproducing devices selected to produce the image. *See* Pourjavid, col. 2, lines 12-17. The Ross et al. reference describes a publisher program that allows the author of a content filled document to use a menu driven utility to automatically change the layout of the document. *See* Ross et al., col. 1, lines 57-64. As the Pourjavid and Ross et al. references are not related to providing operational protocols for medical diagnostic systems, the references fail to cure the deficiencies of the Wood et al. reference, as noted above. Accordingly, Appellants respectfully request the Board overturn the rejection and indicate the allowability of claims 77 and 78.

### **CONCLUSION**

In view of the above remarks, Appellants respectfully submit that the Examiner has provided no supported position or evidence that claims 59-64 and 66-78 are obvious under Section 103 (a). Accordingly, Appellants respectfully request the Board to find claims 59-64 and 66-78 patentable over the prior art of record and overturn all outstanding rejections.

### **Fees and General Authorization for Extensions of Time**

The Commissioner is authorized to charge the fee for the filing of the present brief under 37 C.F.R. § 1.17 (c) in the amount of \$320.00, and any additional fees which may be required, to Deposit Account No. 07-0845, Order No. 15-SV-5482/YOD (GEMS:0036-1).

In accordance with 37 C.F.R. § 1.136, Appellants hereby provide a general authorization to treat this and any future reply requiring an extension of time as

incorporating a request therefor. Furthermore, Appellants authorize the Commissioner to charge the appropriate fee for any extension of time to Deposit Account No. 07-0845, Order No. 15-SV-5482/YOD (GEMS:0036-1).

Respectfully submitted,

Date: SEPTEMBER 8, 2003

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9. **APPENDIX OF CLAIMS ON APPEAL**

59. A method for providing operational protocols to medical diagnostic systems, the method comprising the steps of:

storing a protocol on a machine readable medium, the protocol including at least one operating parameter for a medical diagnostic system;

displaying user viewable indicia descriptive of the protocol at a medical diagnostic location, wherein the user viewable indicia include an exemplary image obtainable via the protocol;

performing a protocol exchange transaction including selecting the protocol via a user interface and loading the protocol at the medical diagnostic location from the machine readable medium via a network connection to the medical diagnostic location; and

storing an accounting record of the transaction.

60. The method of claim 59, wherein the accounting record includes data for invoicing fees associated with the protocol.

61. The method of claim 59, comprising the further step of transmitting an authorization prompt to the medical diagnostic location prior to loading the protocol.

62. The method of claim 59, comprising the further step of verifying a service subscription of the medical diagnostic location, the accounting record referencing the subscription.

63. The method of claim 62, wherein the subscription verified includes data representative of a time expiring subscription.

64. The method of claim 59, wherein the user viewable indicia include a textual description of the protocol.

66. The method of claim 59, wherein the user viewable indicia are viewed at a computer workstation coupled to the medical diagnostic system.

68. The method of claim 59, wherein the network connection includes the Internet.

69. A method for obtaining an operational protocol for a medical diagnostic system or institution, the method comprising the steps of:

ordering a protocol by viewing a protocol list on a user interface at the medical diagnostic system or institution, and selecting a desired protocol from the list, wherein the protocol list includes an exemplary image obtainable via the protocol;

performing a transaction by accessing data from a protocol library defining the desired protocol via a network link between the diagnostic system or institution and the library, and transmitting the data from the library to the diagnostic system; and

storing a record of the transaction.

70. The method of claim 69, wherein the library includes protocols for a plurality of diagnostic system modalities, and wherein the protocol list includes only protocols for a modality of the medical diagnostic system.

71. The method of claim 69, comprising the further step of transmitting data descriptive of the protocol to the medical diagnostic system for addition to the protocol list.

72. The method of claim 69, comprising the further step of authorizing a fee for the protocol.

73. The method of claim 69, wherein the network link includes the Internet.

74. A system for providing operational protocols to a medical diagnostic station or institution, the system comprising:

at least one storage device for storing data defining a protocol, the protocol including data for controlling operation of the diagnostic station;

a messaging module in the diagnostic station or the institution for formulating messages containing data descriptive of a desired protocol, the descriptive data including an exemplary image obtainable via the protocol; and

communications circuitry for establishing a network link between the diagnostic station or institution and a remote protocol provider, for transmitting data descriptive of the desired protocol, and for receiving a reply from the remote protocol provider.

75. The system of claim 74, wherein the communications circuitry is configured to access the Internet and to transmit the data descriptive of the desired protocol in a message via the Internet.

76. The system of claim 74, wherein the messaging module is provided on the medical diagnostic station.

77. The system of claim 74, wherein the messaging module is provided on a computer workstation networked to the medical diagnostic station within the institution.

78. The system of claim 74, wherein the storage device is local to the remote protocol provider.